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BAYER HEALTHCARE LLC			EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/613,819

Filing Date: July 03, 2003

Appellant(s): SIRINYAN ET AL.

Gary H. Levin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 25, 2010 appealing from the Office action mailed January 4, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: claims 11-24.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

Claims 11-24 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mencke et al (U.S. Patent no. 5,712,295) in combination with Chabala et al (U.S. Patent No. 4,199,569).

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claims 11-24 under 35 U.S.C. 103(a) as being unpatentable over Mencke et al (WO 96/28165).

(6) Grounds of Rejection to be Reviewed on Appeal

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,712,295	MENCKE et al	1-1998
4,199,569	CHABALA et al	4-1980

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mencke et al (U.S. Patent No. 5,712,295) in combination with Chabala et al (U.S. Patent No. 4,199,569).

Mencke et al disclose a method for treating an animal having endoparasitic infection comprising administering to said animal agonists and antagonists of the nicotinic acetylcholine receptors of insects (column 1, lines 25-28 and column 6, lines 20-65) but do not disclose a method for treating an animal having both an endoparasitic infection and an ectoparasitic infection with a combination of agonists and antagonists of the nicotinic acetylcholine receptors of insects and avermectin compounds.

Chabala et al disclose that avermectin compounds have significant parasiticidal activity as ectoparasiticides and insecticides in animal health (column 5, lines 65-68 and column 6).

A person having ordinary skill in the art at the time the claimed invention was made would have been motivated to treat an animal having both an endoparasitic infection and an ectoparasitic infection with a combination of a medicament having activity against endoparasitic infection, such as disclosed by Mencke et al and a medicament having activity against ectoparasitic infection, such as disclosed by Chabala et al in order to combat both types of infection.

(10) Response to Argument

Appellant contends that prior to the claimed invention, it was known to treat both endoparasitic and ectoparasitic infections in the same animal using two different types of administration: one via oral or parenteral administration and one via dermal modality and that there is no teaching or suggestion in the cited references to treat both types of infections by using a single treatment type such as dermal administration only or oral administration only. This argument has not been found persuasive. None of the claims are limited to any type of administration. Further, Mencke et al disclose that agonists and antagonists of the nicotinic acetylcholine receptors of insects can be administered orally (column 7, lines 49-54) and Chabala et al disclose oral administration of avermectin compounds (column 6, lines 63-65 and column 7, lines 9-22 and lines 55-63). Since oral administration for both types of medicaments encompassed by the present claims was known in the art at the time of the claimed, it would have been *prima facie* obvious to a person having ordinary skill in the art at the time the invention was made to administer said compounds using one type of administration such as oral administration.

Appellant contends that there is no evidence of record that it would be obvious to combine both medicaments into a single composition. This argument has not been found persuasive. When presented with an animal having both an endoparasitic and an ectoparasitic infection, a person having ordinary skill in the art at the time of the claimed invention would have recognized that the treatment of said animal with only endoparasitic agent or only ectoparasitic agent would not be effective but that an effective treatment against both types of infections requires administration of both

endoparasitic and ectoparasitic medicaments. Since oral administration for both types of medicaments was known in the art at the time of the claimed invention as disclosed by the cited prior art, it would have been *prima facie* obvious to a person having ordinary skill in the art at the time of the claimed invention to administer both types of medicaments in a single composition by a single type of administration, such as oral administration because such a composition would have been expected to be effective in the treatment of an animal having both types of infections.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Elli Peselev

/Elli Peselev/

Primary Examiner, Art Unit 1623

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/Eric S Olson/

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Supervisory Patent Examiner, Art Unit 1623